

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Subrata Talukdar

And

The Hon'ble Justice Supratim Bhattacharya

MAT 1489 of 2022

With

IA No. CAN 2 of 2022

Eastern Coalfields Ltd. & Ors.

– Vs.

Smt. Chapala Kora

For the Appellants : Mr. Biswaroop Bhattacharya

Ms. Priti Banerjee

For the Respondent No.1/ : Mr. Partha Ghosh

Writ petitioner Mr. Amal Kumar Datta

Ms. Simran Sureka

Mr. Debashis Das

Mr. Rahul Agarwal

Heard On : 03.04.2023

Judgement Delivered On : 27.06.2023

Supratim Bhattacharya, J.:-

1. The instant appeal has been preferred by the Eastern Coal Fields Ltd. and others against Smt. Chapala Kora the writ petitioner. The appellants herein were the respondents in the writ petition while the respondent herein was the writ petitioner.
2. Being aggrieved by and dissatisfied with the order dated 06.07.2022 passed in WPA 3332 of 2022 by the Hon'ble Single Bench, the instant appeal has been preferred.
3. Through the impugned order the Hon'ble Single Bench has directed the Eastern Coal Fields Ltd. to pay Monthly Monetary Cash Compensation (for short MMCC) to the writ petitioner from the 27.4.2003, being the date of death of Sago Kora, the employee, and has further directed the ECL to pay the arrear at the prevailing rate from time to time as per National Coal Wage Agreement, between the 27.04.2003 and 10.08.2019 with interest at the rate of 6 percent per annum within 2 months from the date of the passing of the judgement.
4. The fact of the instant *lis* is that Sago Kora was an employee of the ECL and he expired on 27.04.2003. On 20.11.2004 claim for MMCC was made by Chapala Kora the spouse of the deceased. At the time when the writ petitioner applied for MMCC the son of the deceased and the writ petitioner was 17 years 7 months of age. The claim for MMCC was rejected and employment was offered to the male dependent of the

deceased by an order dated 20.11.2004. The said dependent was advised to approach the ECL during the month of April 2005 after attaining the age of majority. On 30.8.2008 an application was again made for employment of his son who had already attained majority by that time. The ECL advised to submit prescribed documents for consideration but no result was obtained. On 29.05.2010 application for employment of the son along with few documents was again made but the ECL authorities found the same to be insufficient. Thereafter from 5.8.2010 to 18.8.2012 continuous correspondences were made by the ECL requesting for submission of the documents. All these were duly received by the writ petitioner and /or the son of the writ petitioner namely Sakati Kora. However, no response was received from the end of the writ petitioner. Thereafter, on 11.8.2019 fresh application for MMCC was made praying for compensation from the date of death of the ex-employee along with 18 per cent interest on the arrears. An order was passed in the writ petition, being WPA application 20163 of 2021 directing the ECL for consideration of the representation dated 11.8.2019. After due consideration reasoned order was passed by the ECL authority which is as follows:

“Under such circumstances and after examining the representation of the petitioner dated 11th August, 2019 addressed to Agent, Jhanjra Colliery, 3/4th Unit, Jhanjra Area, it is directed that the petitioner is entitled to get monetary compensation without any interest in lieu of employment from 11th August, 2019 till she attains 60 years of age or death whichever is earlier and is also subject to age assessment by IME Board as she is “freshly” applying for monetary compensation against the employment of

late husband Sago Kora, otherwise the matter of monetary compensation will be closed for ever. The representation is accordingly disposed of."

Thereafter on 9.2.2022 initial medical examination took place and on 26.4.2022 the ECL authorities sent a letter to the writ petitioner stating that the authority has been pleased to accord approval dated 25.4.2022 for the payment of MMCC of Rs. 26,292.97/- per month as per NCWA and the writ petitioner shall get MMCC till she attains the age of 60 years.

5. The moot point to be considered in the instant lis is the entitlement to compensation of the writ petitioner.
6. The Learned Counsel appearing on behalf the appellants has submitted that the rule deducible from the application of law to the facts and circumstances of the case which constitutes its *ratio decidendi* and not some conclusion based upon facts which may appear to be similar. The Ld Counsel has further submitted that every representation to the Government to the reliefs may not be replied on merits. Representation relating to the matters which have been barred by limitation can be rejected on the said ground alone without examining the merits of the claim. The Ld. Counsel has further submitted that the writ petitioner was pursuing compassionate employment for her son and had not applied for compassionate employment for herself nor did the writ petitioner opted for MMCC at the first instance. He had submitted that the recourse sought for has been made at a belated stage and has further submitted that the ECL, by no stretch of imagination, can be held

liable/responsible for the delay or non-action and/or non-compliance for processing her son's employment. He has further submitted that the writ petitioner had accepted the proposal for compassionate appointment and had never objected or denied to the appointment of her dependent son. He has further submitted that the Hon'ble Single Bench has passed the order of payment under the MMCC in spite of the fact that the writ petitioner has all along pursued for compassionate appointment. The Ld. Counsel has also submitted that ECL cannot be held responsible for the delay and /or non-action and/or non compliance of any direction. The Ld. Counsel had further submitted that the ECL has been burdened by a direction to pay huge arrears. Ld. Counsel has also submitted that the petitioner once having applied for the employment of his son on compassionate ground, has waived her right to claim MMCC. The Ld. Counsel has further submitted that the writ petitioner came up with a prayer in the writ petition after more than 16 years of death of her husband as such the prayer of the writ petitioner being made at such a belated stage ought not to have been accepted. Considering the aforesaid facts and circumstances, the Ld. Counsel has prayed for allowing the instant appeal.

7. The Ld. Counsel appearing on behalf of the respondent has stressed upon the point that the respondent/writ petitioner applied for monetary compensation in the year 2004 while her husband has expired just on the previous year, that is on 27.4.2023. He has further submitted that

the appellant ECL rejected the prayer of the respondent/writ petitioner for monetary compensation and advised her to apply for her son's employment after the said son attains the age of majority, that is 18 years. He has further submitted that the ECL authority has never included the name of the son of the writ petitioner in the live roster which was supposed to be done by the ECL as per the NCWA. The ld. Counsel has further submitted that the ECL authority by some way or the other has dragged the matter without coming to a fruitful conclusion. Relying on the aforesaid facts and circumstances, the Ld. Counsel appearing on behalf of the respondent supported the judgement and Order passed by the Hon'ble Single Bench and has prayed for rejection of the instant appeal.

8.

- a)** This Court now takes into consideration that the employee of the ECL namely, Sago Kora expired on 27.4.2003 and the respondent/writ petitioner namely, Chapala Kora applied for monetary compensation in the year 2004, so there is no inordinate delay in filing the application praying for monetary compensation.
- b)** The ECL authority rejected the prayer of the writ petitioner praying for monetary compensation and advised the writ petitioner to apply for her son's employment on compassionate ground after the son attains majority, that is 18 years.

- c)** It is fact that the ECL authority did not incorporate the name of the son of the writ petitioner in the live roster of the ECL which ECL was supposed to do as per the provision under clause 9.5.0 (iii) read with clause 9.5.0 (ii) of the NCWA-VI and VII.
- d)** At the time of death of Sago Kora, NCWA-VII was in operation.
- e)** Thereafter on 11.8.2019 a fresh application was made for MMCC to be paid from the date of death of the employee.

The ECL authority considered the said prayer, ordered that the writ petitioner is entitled to get monetary compensation without any interest in lieu of employment from 11.8.2019, till she attains 60 years of age or expires whichever is earlier and the said writ petitioner is subject to assessment of age by the IME Board as she is applying afresh for monetary compensation. Otherwise the matter of monetary compensation will be closed for ever.

- f)** Initial medical examination took place and as regards to payment communication was made.
- g)** From the aforesaid facts and circumstances it is apparent that employment was not given on compassionate ground to any of the dependents of the deceased employee, that is either the mother or the son. It also reveals that the ECL authority asked the son of the writ petitioner to approach the authority after he attains 18 years of age but the name of the son of the petitioner was not enrolled in the live roster which ought to have been done by the ECL authority.

Ultimately after the last application was made on 11.8.2019, the ECL authority ordered that the writ petitioner is entitled to receive the MMCC from the date i.e. 11.8.2019.

It is evident that the ECL authority neither had given appointment nor MMCC and even the name of the son of the deceased employee was not enrolled in the live roster. The authority should have taken a step so that the family of the writ petitioner could have overcome the penury, for which the provisions of monthly cash compensation or appointment on compassionate ground are in force.

- h)** It is now well settled that MMCC is receivable by the family of the deceased from the date of death of the employee which has been time and again highlighted by this Hon'ble Court. In this regard this Court cites the Judgement passed in the case between *M/s. Eastern Coalfields Ltd. Vs. Dewanti Kumari and Ors* reported in 2016 (3) WBLR (Cal) 464.
- i)** From the above discussion it is apparent that MMCC is to be paid to the writ petitioner from the date of death of the employee as such the order of the Hon'ble Single Bench directing the ECL to pay MMCC to the writ petitioner from 27.4.2003, being the date of death of Sago Kora, the employee, along with arrear at the prevailing rate from time to time as per NCWA, between 27.4.2003 and 10.8.2019 with interest at the rate of 6 per cent per annum, is in accordance with law as the writ petitioner is entitled to receive MMCC form the date of death of

her husband who was the employee till the writ petitioner attains 60 years of age or expires, whichever is earlier.

In addition the rate of interest of 6 per cent per annum which has been imposed is not at all exorbitant.

Accordingly, the Judgement and Order of the Hon'ble Single Bench deserves no intervention.

MAT 1489 of 2022 with IA No. CAN 2 of 2022 stands accordingly dismissed.

Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I Agree.

(Subrata Talukdar, J.)

(Supratim Bhattacharya, J.)